

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF OHIO
3 WESTERN DIVISION
4

5 JEFFERSON-PILOT :
INSURANCE COMPANY, :
6 :
Plaintiff, :
7 :
vs. : Case No. C-1-02-479
8 :
CHRISTOPHER L. :
9 KEARNEY, :
:
10 Defendant. :

11 Deposition of MARTIN P. LEHENBAUER, M.D.,
12 a witness herein, taken by the plaintiff as
13 upon cross-examination, pursuant to the
14 Federal Rules of Civil Procedure and pursuant
15 to notice by counsel as to the time and place
16 and stipulations hereinafter set forth, at
17 the offices of Health First Physicians, 608
18 Reading Road, Suite C, Mason, Ohio, at 7:38
19 a.m., June 14, 2007, before Elaine Haberer, a
20 Registered Professional Reporter and Notary
21 Public within and for the State of Ohio.

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1 APPEARANCES

2

On behalf of Plaintiff:

3

WILLIAM R. ELLIS, ESQ.

4

of

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Cincinnati, Ohio 45202

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On behalf of Defendant:

8

KENT WELLINGTON, ESQ.

of

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Graydon Head & Ritchey

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1 S T I P U L A T I O N S

2 It is stipulated by counsel for the
3 respective parties that the deposition of
4 MARTIN P. LEHENBAUER, M.D., a witness herein,
5 may be taken at this time by the plaintiff as
6 upon cross-examination and pursuant to the
7 Federal Rules of Civil Procedure and notice
8 to take deposition, all other legal
9 formalities being waived by agreement; that
10 the deposition may be taken in stenotype by
11 the Notary Public Reporter and transcribed by
12 her out of the presence of the witness; that
13 the transcribed deposition was made available
14 to the witness for examination and signature
15 and that signature may be affixed out of the
16 presence of the Notary Public-Court Reporter.

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1 MARTIN P. LEHENBAUER, M.D.,
2 a witness herein, of lawful age, having
3 been first duly sworn as hereinafter
4 certified, was examined and testified as
5 follows:

6 CROSS-EXAMINATION

7 BY MR. ELLIS:

8 Q. Morning, Doctor, would you
9 please identify yourself for the record?

10 A. Martin Lehenbauer, MD. 07:37AM

11 Q. Doctor, what's the area of
12 practice that you're in?

13 A. Family practice.

14 Q. In your practice did you have
15 occasion to treat Christopher Kearney?

16 A. Correct.

17 Q. And according to the records
18 that you provided to me, the first visit was
19 in November of 1993?

20 A. Yes. 07:38AM

21 Q. At that time when he came to see
22 you, the chief complaint that he made was
23 that he was experiencing anxiety for a period
24 of roughly equal to a year, primarily

1 secondary to work, stress because his
2 business is down 30 percent; is that correct?

3 A. Correct.

4 Q. You indicated in there that he
5 owned his own business --

6 A. Correct.

7 Q. -- right? Did he tell you what
8 that business was during that visit?

9 A. I don't see that in my notes,
10 so --

07:38AM

11 Q. Okay. Under the review of
12 systems, you have wife, some symbol, and then
13 successful, I'm not sure what that --

14 A. With -- wife with successful
15 treatment.

16 Q. Okay. Wife have successful
17 treatment with Prozac?

18 A. Correct.

19 Q. Okay. And you indicated there
20 that he was presently utilizing counseling
21 for the past several years?

07:39AM

22 A. Correct.

23 Q. Is that the wife or Chris?

24 A. I think my intention there was

1 that he was involved in that, I didn't make
2 notes in terms of whether that was, you know,
3 in terms of that particular note it looks
4 like it was in reference to the marital
5 situation.

6 Q. Okay. The reason I ask you,
7 wife is being successfully treated with
8 Prozac, she's happy in the marriage. You
9 have presently utilizing counseling past
10 several years. I wasn't sure whether Chris 07:39AM
11 or the two of them, or what you were trying
12 to suggest.

13 A. Well, the note says, happy in
14 marriage, presently utilizing counseling.
15 Since that was all one sentence I think my
16 intention there was that particular reference
17 was to that.

18 Q. All right. You indicated that
19 he told you he had a degree in psychology and
20 that he was a patient who was well versed in 07:40AM
21 the recent treatment aspects?

22 A. Correct.

23 Q. Are we talking about him
24 understanding his treatment for --

1 A. Right.

2 Q. -- psychological issues?

3 A. Correct.

4 Q. Did he tell you how long he had
5 been treating for his psychological issues?

6 A. I don't have that in my notes
7 for that first visit.

8 Q. Did he appear to be an
9 intelligent and insightful individual to you
10 at that time?

07:40AM

11 A. Go ahead and ask that question
12 again.

13 MR. WELLINGTON: Are we still in
14 November '93?

15 MR. ELLIS: Yes.

16 Q. As of the first visit, did he
17 strike you as an intelligent, straight
18 thinking individual who understood his
19 situation?

20 A. In my physical exam I just, I
21 had listed that he was insightful and
22 motivated presently for improvement, so --

07:41AM

23 Q. Your assessment was dysthymia
24 and anxious mood?

1 A. With, yeah, with anxious mood.

2 Q. Dysthymia, for the uneducated,
3 that's sort of a low level depression?

4 A. Or chronic depression.

5 Q. Sort of a guy who feels down
6 most of the time?

7 A. Correct.

8 Q. But doesn't rise to the level,
9 at least at that point, of a true depression?

10 A. Yeah, by this first visit, 07:41AM
11 correct.

12 Q. Okay. It appears that you saw
13 him again the following month, you did
14 prescribe medication for him at that time?

15 A. Correct.

16 Q. He had been taking Xanax for
17 quite some time, and what else did you
18 prescribe?

19 A. An antidepressant, Prozac.

20 Q. Okay. You followed up with him, 07:42AM
21 it appears, a month later and found that with
22 the Prozac he had a marked improvement in his
23 mood, marked improvement in his irritability,
24 his energy, and his concentration, correct?

1 A. Correct.

2 Q. And apparently by history his
3 wife also noted the improvement, or was she
4 here to tell you that?

5 A. I think that was probably his
6 history to me. I don't have a note that she
7 was with him that day.

8 Q. Okay. And your assessment, at
9 least as of that time, was depression was
10 improved, and I assume you maintained the 07:42AM
11 same medication?

12 A. Correct.

13 Q. January of '94 you found that he
14 had been using the Prozac for two months, he
15 was stable depression, but was asking for a
16 higher dose as to may be more effective; is
17 that right?

18 A. That was the patients, right.

19 Q. Okay. Did you discuss with him
20 why he was asking for a higher dose if he was 07:43AM
21 effectively stable?

22 A. In the notes it says dealing
23 with his and family stressors.

24 Q. Okay. His stressors being the

1 business issues?

2 A. Correct.

3 Q. It said he told you that he
4 takes Xanax as he needs it if he's feeling
5 out of control. Did he describe what out of
6 control was?

7 A. I didn't note that in that
8 visit.

9 Q. No, obviously it's a long time
10 ago, you have no present recollection? 07:43AM

11 A. Correct.

12 Q. Okay. He also told you that he
13 and his wife were seeing a psychologist
14 because of his wife's increased anger?

15 A. Right.

16 Q. Your assessment was depression
17 and you decided to try the increased dose
18 that he had been requesting?

19 A. Correct.

20 Q. Did he tell you at that time 07:44AM
21 that there were any thoughts of divorce or
22 separation from his wife?

23 A. At that note, at that office
24 visit I don't have any notes along those

1 lines.

2 Q. The visit a month later,
3 however, he did tell you that he had been
4 under marital stress for several years and
5 that his intention was to divorce, for the
6 separation having occurred two to three weeks
7 before that visit, which would have been
8 around the time of your prior visit; is that
9 right?

10 A. Yeah, that office visit was 07:45AM
11 February 7th, so just if the separation
12 occurred, it could have been a week or so
13 after that prior visit, correct.

14 Q. And again, your assessment was
15 simply depression and you continued the
16 medications?

17 A. On the February 7th, '94 visit,
18 actually we did increase his dose of the
19 antidepressants again at that time.

20 Q. Now, that was February the 7th, 07:45AM
21 you saw him later that same month on the
22 28th, or is that simply a phone call where he
23 suggested he was going on vacation?

24 A. Yeah, that, I mean,

1 unfortunately the particular phone call does
2 not have a date on it, it's placed right
3 before a May 2nd, '94 visit, but yeah, there
4 was no office visits between the February
5 7th, there's a --

6 Q. All right. Let me show you what
7 I'm looking at here, I'm trying to figure out
8 what that date is.

9 A. So it looks like we had -- nurse
10 made a recording about his Xanax prescription 07:46AM
11 at that point, so whether those two tie
12 together, I'm not sure, since they are listed
13 separately.

14 Q. Okay. Yeah.

15 A. But no office visit in there,
16 yeah.

17 Q. All right. So the next visit
18 then was May of '94, which was about six
19 months after the -- or I'm sorry, three
20 months after the prior visit? 07:47AM

21 A. March, April, May, correct,
22 three months.

23 Q. At that time he reported to you
24 that he was seeing a counselor every three

1 weeks; is that right?

2 A. Yeah, every three weeks,
3 correct.

4 Q. Who was again suggesting
5 increasing the Prozac further to 80 to 100
6 milligrams?

7 A. Correct.

8 Q. Did you comply with that and
9 increase his dose at that visit?

10 A. At that particular visit, we 07:47AM
11 had, it looks like I kept him at the Prozac
12 60 milligrams and we were going to follow up
13 again in a couple months.

14 Q. Okay. He indicated that the
15 patient, and again, I'm assuming this is
16 history the patient told you, that he was not
17 functioning quite back to normal work wise at
18 that point but that he felt that the problem
19 was he was going through this divorce
20 process; is that right? 07:47AM

21 A. Yeah, the note, and that's from
22 my notes, not functioning back to normal work
23 wise but in process of divorce, so --

24 Q. Okay. Then the next note, the

1 next line of it, feels some, and I'm not

2 sure --

3 A. Some, my shorthand, some normal

4 changes.

5 Q. Okay. Some normal changes

6 related to adjustment disorder. So what he

7 was describing to you then, was what you

8 would expect to see if someone is under

9 stress from a divorce?

10 A. Yeah. And again, in my mind by 07:48AM

11 adjustment disorder, that can be an

12 adjustment to any sort of stress or change in

13 his life, including divorce.

14 Q. Okay. The concept of adjustment

15 disorder, that's -- is that generally

16 considered a temporary problem caused by him

17 being focused on some sort of stressor in his

18 life such as the divorce?

19 A. Correct.

20 Q. He also advised you then that he 07:49AM

21 had filed for a partial disability claim

22 primarily due to his decreased productivity

23 at work?

24 A. Correct.

1 Q. Now, I'm curious as to prior
2 he -- part of his anxiety at the first visit
3 was that his work was falling off, his
4 business was falling off, and this one
5 suggests that he's claiming disability
6 apparently because of his inability to, I
7 guess, bring it back, is that what we're
8 looking at?

9 A. Again, all I can state is, you
10 know, the way I list it in there and this was 07:49AM
11 by his history, you know, why he had filed
12 for, you know, partial disability.

13 Q. Okay. And that was due to his
14 decreased productivity at work?

15 A. Right.

16 Q. Going through the divorce?

17 A. All I said was due to decreased
18 productivity.

19 Q. All right. Was it clear to you
20 at that time that what was effecting him was 07:50AM
21 the marital situation, or what appeared to be
22 effecting him?

23 A. I mean, again, that was included
24 in that particular note for that day, from

1 May 2nd, '94.

2 Q. Uh-huh. The reason I ask you is
3 up to this point in your notes, the outside
4 stressors that had been identified primarily
5 relate to he and his wife having difficulties
6 and going to counselling and so forth; is
7 that fair to say?

8 A. Well, again, like, in January,
9 you know, where we talked about where I think
10 I was looking at this because both his and 07:50AM
11 family stressors, and so I was still kind of
12 sorting those out from a work and family
13 situation.

14 Q. Okay. So, between the decrease
15 in the business and the problems with the
16 wife, that was sufficient to cause him some
17 difficulties?

18 A. Correct.

19 Q. Later that same month, he came
20 in to have some shots and so forth because he 07:51AM
21 was going to Asia?

22 A. Which visit?

23 MR. WELLINGTON: We're still
24 in --

1 Q. May 17th, '94.

2 A. May 17th, '94, looks like, yeah,
3 visit primarily with my nurse.

4 Q. Okay. Gammaglobulin is
5 protective --

6 A. Preventative.

7 Q. Preventative for going to Asia?

8 A. Yeah, at that time it was
9 preventative for hepatitis.

10 Q. And he wanted some prescription 07:51AM
11 for, is that malaria?

12 A. Yeah, preventative for malarial
13 infection, correct.

14 Q. He was going to Asia, he checked
15 in with you, he said some things ought to be
16 done and --

17 A. Well, again, usually in that
18 situation it looks like he came in and gave
19 that history and all I did that day was write
20 the prescription, and you know, the nurse 07:52AM
21 gave him the gammaglobulin, so --

22 Q. And then May 23rd, '94 he's
23 leaving for China and he wanted a refill on
24 his Xanax and Prozac so he had his medication

1 with him?

2 A. Correct.

3 Q. And then August of '94 it was
4 just a refill of prescription?

5 A. Correct.

6 Q. So the next visit then was
7 September of '94; is that right?

8 MR. WELLINGTON: September?

9 A. Yeah, September 30th.

10 Q. At that point he told you, still 07:52AM
11 seeing counselor, that he was still
12 experiencing low energy levels which were
13 effecting his work; is that right?

14 A. Correct.

15 Q. And your assessment at that time
16 was that, when I see a versus mark like that,
17 it suggests to me that you are opting for a
18 couple of possible diagnoses. One of them
19 was major depression, the other was
20 dysthymia, and the third would have been 07:53AM
21 adjustment disorder?

22 A. Again, the way I list my note at
23 that time was I would look at the major
24 depression versus dysthymia that I was

1 entertaining, you know, whether my original
2 dysthymia diagnosis was, you know, correct
3 just based on the amount of time now that I
4 had been seeing him. The other one is
5 adjustment disorder, and medication affects,
6 I would look as separate line items, just not
7 numbered.

8 Q. So, the adjustment disorder
9 you're pretty good with, you think that was
10 clear?

07:53AM

11 A. Adjustment disorder and then
12 medication affects, correct, so the kind of
13 three separate lines there.

14 Q. Okay. The medication affects
15 were side effects of the medication he was
16 on?

17 A. Thinking more about that,
18 correct, yeah.

19 Q. And those were primarily sexual
20 dysfunction?

07:54AM

21 A. According to those notes that
22 day, correct.

23 Q. Side effects?

24 A. Right.

1 Q. At the time it looks like you
2 were going to switch some of the medications?

3 A. And it looks like that was based
4 on sleep complaints, and partly related to,
5 again, antidepressant uses, sometimes even
6 affecting sleep, you know, adversely. So,
7 looks like I was making a switch in the,
8 primarily in the bedtime medicine. And in
9 that case actually using a low dose of
10 another antidepressant.

07:54AM

11 Q. Okay. The trazodone?

12 A. Correct.

13 Q. And that was going to help him
14 in getting better rest in the evenings?

15 A. Correct. And it also looks
16 like, according to my note, trying to get the
17 Xanax more to a PRN basis versus an every day
18 basis.

19 Q. Okay. The note goes on to say
20 that you want to consider reducing the Prozac
21 in a month or two once the divorce is
22 settled?

07:55AM

23 A. Yeah, in my plan there, that's
24 what I had written.

1 Q. Okay. Is that something you
2 discussed with him or is that something that
3 you were noting for yourself?

4 A. Usually there it's something
5 that I've discussed with the patient and, you
6 know, thinking out loud with the patient in
7 terms of future plans.

8 Q. So, at that point then you were
9 looking at the depression as being
10 potentially related, at least to the ongoing 07:55AM
11 stress of the divorce, which was -- is still
12 his primary focus at this point?

13 MR. WELLINGTON: Objection.

14 Q. I'm sorry, you can answer, if
15 you can.

16 A. You know, in thinking about the
17 time perspective here, if I started seeing
18 him in February of '04, this is still about
19 six, seven months.

20 Q. You mean, February of '03 -- 07:56AM

21 A. Oh, excuse me.

22 Q. Or November of '03?

23 A. Yeah, so, now we're about a
24 year, year-and-a-half -- year-and-a-half out.

1 Generally with antidepressants my plan in
2 most patients is after a period of time is to
3 give them a trial off so part of it is just
4 always planning an opportune time on that.

5 Q. I guess what I'm trying to get
6 to is, I understand you want to try to reduce
7 the medications.

8 A. Okay.

9 Q. The timing of it, at least
10 according to the notes, seem to be related to 07:56AM
11 the settlement of the divorce that is taking
12 the one stressor out of his life?

13 A. Correct; correct.

14 Q. The next note I see is
15 October 26th and that looks like he was
16 providing you a copy of an insurance form, am
17 I right, or did he bring you a copy of an
18 insurance form?

19 A. It says see copy for partial
20 disability. 07:57AM

21 Q. Going back a year-and-a-half,
22 secondary to depression and the adjustment
23 disorder?

24 A. Correct.

1 Q. Right?

2 A. I would have to look in the
3 chart to see what that particular form was,
4 whether it was something that I completed
5 versus if it had been completed by someone
6 else.

7 Q. It may have been one completed
8 by Dr. Judd McClure, for example?

9 A. Possibility, correct.

10 Q. The first form I saw in there 07:57AM
11 was in '04, yeah, the form I see in there
12 dated '04, I didn't see one from you. Did
13 you complete one that you're aware?

14 A. Well, that's what I'm saying,
15 I'm not -- it looks like, according to my
16 note, this was him providing me a copy of a
17 form that had been --

18 Q. All right.

19 A. -- completed by someone else,
20 but I don't have that in front of me right 07:58AM
21 now, so I have to --

22 Q. You indicated at that point,
23 anyways, in October of, we're in '94, that he
24 was showing some gradual improvement with the

1 medications and psychotherapy. You also made
2 note that the divorce was final last week and
3 that he was now making a business decision to
4 reduce his travel?

5 A. Correct.

6 Q. Medications continued?

7 A. Correct, there were no changes,
8 at least on medication, it looks like at that
9 time.

10 Q. Okay. Next time that you see 07:58AM
11 him is in March of '95. I'm guessing from
12 the sporadic nature of the visits, that is
13 months in between, that you're not primarily
14 treating the depression other than managing
15 the medications for it?

16 A. Right. I mean, I was aware that
17 he was seeing a counselor and I think at that
18 visit in March I made notes he was seeing a
19 counselor a couple times a month. So at that
20 point, right, it's more a matter of trying to 07:59AM
21 manage the medical side of things.

22 Q. Because a counselor can't
23 prescribe, so you were handling --

24 A. This particular one, yeah.

1 Q. In that note of March of '95,
2 you note that he's four months out from the
3 divorce, but he's still having difficulty
4 focusing on work; is that right?

5 A. Yeah, still hard to focus on
6 work and accomplish expectations.

7 Q. Was he still ruminating over the
8 divorce at that point?

9 A. In my notes, I don't know that I
10 made any mention of the divorce at that 08:00AM
11 March 10th visit, so --

12 Q. Well, in the March 10th visit
13 you indicate, seem kind of --

14 A. Just four months status post
15 divorce was the only thing I noted, correct.

16 Q. Your assessment, again, was
17 dysthymia, and then you had a rule out
18 diagnosis of, is that ADD?

19 A. Correct.

20 Q. Of adult attention deficit 08:00AM
21 disorder?

22 A. Correct.

23 Q. Okay. Do you know what prompted
24 that rule out diagnosis?

1 A. And again, that was getting back
2 to just him sharing that history at that
3 point, trying to -- and I think in my mind
4 with that particular rule out, thinking about
5 is there some other component here that's,
6 you know, part of this process, so --

7 Q. Okay. Now, what was it
8 symptomologically, if you recall, that
9 prompted the potential diagnosis of attention
10 deficit disorder?

08:01AM

11 A. The primary thing, again, from
12 1995, was just that the line that would have
13 said still hard to focus on work.

14 Q. Okay. You saw him again in
15 October of '95, which by history he told you
16 he's still on partial disability and in
17 therapy. Told you that he was in and out of
18 several relationships, I'm assuming that's
19 with females?

20 A. Correct. I didn't note females,
21 but --

08:01AM

22 Q. Well, relationships with
23 somebody?

24 A. Correct.

1 Q. Okay. I shouldn't have made
2 that judgment. You say you reviewed the
3 depression/dysthymia, is it still somewhere
4 between the two that you're trying to come
5 down on for a diagnosis?

6 A. Well, again, dysthymia being
7 thought of, again in my mind, as chronic, you
8 know, depression, you know, I think that line
9 was just my, you know, terminology. I don't
10 know at that point that I was still debating 08:02AM
11 the two. I would kind of look at there is
12 some similarities there. At this point I've
13 been treating him for almost a couple years.

14 Q. You also, at that time, changed
15 his medication apparently to give -- had he
16 been on Paxil or were you changing to Paxil?

17 A. Actually the visit in March I
18 had changed the Prozac to Paxil at that time
19 primarily related to the dose of Prozac had
20 gotten to the point where I was feeling that 08:02AM
21 maybe it had either lost its effectiveness or
22 wasn't as effective. And so it was really a
23 change in medication back in March. And at
24 the visit in October, that visit, based on

1 the notes where he was having some, again,
2 sexual dysfunction history, changed over to
3 the Effexor.

4 Q. Okay. So, in October he went
5 from the Paxil to the Effexor?

6 A. Correct.

7 Q. You saw him a couple months
8 later in December. Apparently the Effexor
9 was having some beneficial effect?

10 A. At that point, yeah, the note 08:03AM
11 says Effexor going well.

12 Q. Uh-huh. Said that his work at
13 that point was going okay, things may improve
14 depending on -- is that clients?

15 A. Yeah, there was a note made at
16 that time by a medical student working with
17 me. Generally doing well, has plans for the
18 holidays, works going, quote, unquote, okay.
19 Things may improve. Honestly I can't tell
20 you what that -- it looks like clients, but I 08:04AM
21 can't make sense of it with that particular
22 word there, so --

23 Q. Okay. In any event, his
24 situation was improving, his work was

1 improving, the Effexor seemed to be doing
2 well, he was making progress?

3 A. Again, the note that day says
4 work going, quote, unquote, okay. Things may
5 improve. But again, the second line there
6 it's hard to tell what that means, so --

7 Q. The next time he saw you after
8 the December '05, (sic), was May of '96, he
9 came in, his ears were blocked, just sort of
10 a normal physical visit. At the time he said 08:05AM
11 that he had taken himself, and I'm going to
12 have to have you help me with your shorthand.

13 A. Yeah, at the visit in December
14 prior to that I had increased the Effexor to
15 one-and-a-half tablets twice a day with that
16 particular dose, and then my note at that
17 time says had taken himself to two tablets
18 twice a day.

19 Q. And he felt he was doing better
20 with the increased dosage that he gave 08:05AM
21 himself?

22 A. Yeah, by those notes, correct.

23 Q. And then it says he was doing
24 less exercise and gaining a little weight and

1 that the sexual function was better once he

2 was off the SSRI; is that the Paxil?

3 A. Paxil, Prozac, correct.

4 Q. Okay. Any changes in the

5 medications at that time in --

6 A. It doesn't look like I made any

7 changes at that time.

8 Q. Okay. Apparently the next visit

9 was in September of '96; am I correct?

10 A. Yes, September 13th.

08:06AM

11 Q. Okay. And that the occasion for

12 that visit was for you to remove some

13 sutures. He had apparently suffered an

14 injury falling off a ladder. Is that a work

15 related injury, do you know?

16 A. Didn't make any notes about

17 that.

18 Q. Okay. Down below he says that,

19 and again, your shorthand, something Effexor?

20 A. Follow up Effexor.

08:07AM

21 Q. Follow up Effexor, patient

22 decreased dose due to cost, but doing better

23 with work, correct?

24 A. Correct, that's my notes.

1 Q. So again, it appears that you've
2 come upon a medication seems to be helping
3 him with his depression, dysthymia?

4 A. At that point, I think the
5 Effexor was probably more satisfactory. We
6 were having less side effects, but at that
7 point, you know, my note says he was doing a
8 little better.

9 Q. Okay. He saw you again in
10 December, and the concern then was that he 08:07AM
11 had been out in California, he had felt that
12 either because of a food allergy or some soap
13 in a hotel, he had developed some skin
14 irritation or itchiness when showering; is
15 that right?

16 A. Yeah, primary thing was a rash
17 or an itch, it looks like just trying to sort
18 out causes.

19 Q. Okay. You didn't notice any
20 visible rash, but this was the chief 08:08AM
21 complaint, this was the issue for this visit?

22 A. Correct.

23 Q. Okay. He requested some blood
24 examinations at that time?

1 A. Well, back in -- at the May 16th
2 visit that I had had with him, in my notes I
3 actually said because of the weight gain may
4 need labs to rule out other metabolic
5 changes, and I think because that never
6 occurred, I went ahead and, looks like I
7 ordered some screen labs at that time based
8 on that.

9 Q. Okay. And he asked, of course,
10 that since you're taking blood anyway, to run 08:08AM
11 an HIV test?

12 A. Correct.

13 Q. And you said discussed etiology
14 and will hold soap contact, I'm not sure what
15 you're referring to?

16 A. There the etiology, since the
17 assessment that day was primarily the rash
18 and itching related to that.

19 Q. Okay. It appears that after
20 those labs, the next element seems to be in 08:09AM
21 June of '97; is that right?

22 A. Last one was --

23 Q. Maybe these aren't -- maybe
24 these aren't your notes. In June of '97 he

1 apparently was involved in a fight with a
2 fellow employee and had some bruising of his
3 hand from throwing punches, in his chest and
4 upper abdominal area from receiving them. Is
5 that a note that's contained in your records?

6 A. I don't have that note. Like I
7 say, the next note I have after September of
8 '96 goes out to November 15th of '97. Let me
9 just make sure.

10 Q. You didn't have -- 08:10AM

11 A. The notes aren't out of order, I
12 don't see anything in the --

13 Q. Do you have a Bethesda
14 Tri-Health, Good Samaritan emergency room
15 report from June 6th of '97 in your records?
16 I think that's where I got it.

17 A. Yeah, that's filed under, so
18 June 6th of '97 there is an ER report there,
19 correct.

20 Q. Okay. That was forwarded to you 08:11AM
21 by the ER, I guess?

22 A. Correct.

23 Q. And that was what I was
24 describing as the injuries from the fight

1 with a fellow employee.

2 A. Yeah, 6/6/97.

3 Q. Okay. You didn't see him
4 actually until November, I think you said, of
5 '97?

6 A. Looks like that's correct.

7 Q. Okay. Was there any change in
8 his condition in November of '97?

9 A. There was a visit, the
10 November 15th, '97 visit, I have documented 08:12AM
11 primarily as, it looks like it was with my
12 partner, primarily, of poison ivy,
13 dermatitis. So the actual next visit in
14 terms of noting the depression or treatment
15 was December 12th of '97, and that was, looks
16 like just a med check.

17 Q. Okay. There's a note, appears
18 to be a typed note of some substance on
19 12/12/97?

20 A. Yeah, at that point we had some 08:12AM
21 dictation.

22 Q. Okay. During that visit,
23 12/12/97 he told you he was continuing to see
24 his psychologist once or twice a month?

1 A. Correct.

2 Q. At this point he says he's
3 continuing to run his own business where he
4 employs several engineers and builds robotic
5 type machines on a contractual basis. He
6 told you he was under a significant amount of
7 stress at work and has some significant
8 indebtedness related to his work; is that
9 right?

10 A. According to my notes, correct. 08:13AM

11 Q. Prior to this time, had he told
12 you what his business was at all?

13 A. Again, recall, I don't know if I
14 knew exactly the nature of his business prior
15 to that visit. Like I say, since it's not
16 specifically stated in my notes.

17 Q. Did he ever tell you that he was
18 a manufacturer's rep, that he was doing sales
19 for several different clients or customers
20 and that that was part of the travel he was 08:13AM
21 doing prior?

22 A. I don't know if I was aware of
23 that.

24 Q. Okay. You do recall the earlier

1 note early on in your treatment where he said
2 he was going to reduce his travel for
3 business, right?

4 A. Right. The travel note, I don't
5 know if I necessarily connected that with
6 sales or not.

7 Q. Okay. In this note of November
8 12th he also told you about being back
9 stabbed by one of his engineers concerning a
10 job they were working on and how he sought 08:14AM
11 him out and pummeled him, which, of course,
12 would be related to the June 6th note where
13 he was injured in the fight?

14 A. Yes, it's in my notes.

15 Q. Okay. He talked about his
16 concern over his aggressive tendencies and
17 recently begun to work out on a regular basis
18 in hopes of using some of this. I'm not sure
19 I catch the drift of that note, can you fill
20 me in? 08:15AM

21 A. In looking back at that, I think
22 I was probably talking about working out in
23 the sense of exercise and trying to release,
24 or you know, reduce some of that aggressive

1 tendency in a more productive way than
2 assaulting someone.

3 Q. Than getting in a fight, right,
4 okay. I thought I understood that correctly,
5 I wasn't sure. You say here then the patient
6 went in to significant detail about his
7 present work, job, and the difficulty in his
8 fledgeling business -- the difficulty of his
9 fledgeling business to survive at that time,
10 and that he was concerned that it might not 08:15AM
11 survive because of market place issues for
12 that type of work.

13 A. Again, in my notes, correct.

14 Q. Now, the detail that he gave
15 you, of course, was that he's building
16 robotic machines, and apparently, if you make
17 use of the term fledgeling business, this was
18 a new or at least a newer adventure for him
19 in the occupation field?

20 A. And again, I didn't put any 08:16AM
21 quotation in there so it's hard to say
22 whether that was his quotation versus my
23 interpretation. So at that point I would
24 have to say that was my interpretation of

1 what he was telling me.

2 Q. Okay. You wouldn't make
3 reference to a fledgeling business if he had
4 been in the same business for many, many
5 years?

6 A. Well, I don't know if I could
7 say that as much as I would be looking at
8 that whether this was a new opportunity for
9 him versus, you know, an ongoing steady
10 employment, like I said. 08:16AM

11 Q. Okay. Well, if we take a look
12 at that.

13 A. I don't have a whole lot of
14 other detail there to tell me.

15 Q. Sure. If we take a look at a
16 letter which he apparently gave you a copy of
17 that he sent the following month to a
18 Mr. Harold Shelton.

19 A. What's the date on that?

20 Q. The date on it is January 13th, 08:17AM
21 '98, which would be a month and a day after
22 this visit.

23 A. Can I look and see if I have it?

24 Q. It came from your notes, it's a

1 typed letter, it's got a stamp copy on it,
2 it's a letter from Mr. Kearney to Harold
3 Shelton?

4 A. Let me see if I can find it in
5 my notes.

6 Q. Sure.

7 A. It came out of my chart, huh?

8 Q. It's got -- your records were
9 marked with your name and the number as we
10 received them.

08:19AM

11 A. Yeah. January 13th, '98.

12 Q. It's a two page letter from him.

13 A. Anything that's addressed from
14 the insurance company ends up over here,
15 let's see. The copy you have, it does look,
16 I mean, that's my signature that I saw it, I
17 may just have to --

18 Q. This writing at the top is your
19 signature?

20 A. Yeah, usually if something comes
21 across my desk, that's how I would initial
22 it.

08:20AM

23 Q. We can work from this copy if
24 it's easier.

1 A. Yeah, until I can sort through
2 because I don't think I have any other charts
3 on him to --

4 Q. Okay. When I'm questioning you,
5 you can see I've highlighted the one
6 paragraph, he's talking about the decrease in
7 his business that he's spent years building
8 and that the decrease was due to his
9 inability to spend more time with the
10 business because of his illness, what he's 08:21AM
11 telling Mr. Shelton, correct?

12 A. Again, in that letter he says,
13 again, these losses were inevitable due to my
14 health condition and not being able to spend
15 as much time working as previously.

16 Q. Now, he's talking here about a
17 business he's spent many years building,
18 right?

19 MR. WELLINGTON: Objection.

20 Q. I'll find it exactly. "My 08:21AM
21 business which I worked many years to build
22 up has suffered, makes me feel pretty down."

23 A. It is stated in that letter,
24 correct.

1 Q. Right? Now, if we're talking
2 about the same business, that would seem to
3 conflict with your use of the term
4 fledgeling?

5 MR. WELLINGTON: Objection.

6 Q. If we're talking about the same
7 business, right?

8 A. And again, looking back at '97
9 and using that word.

10 Q. Sure. 08:22AM

11 A. You know, I don't know I can be
12 clear any more what I was thinking.

13 Q. Right; I understand. If however
14 he had a long standing business as a
15 manufacturer's rep, and actually began a new
16 fledgeling business building robotic
17 machines, then both this letter and your
18 notes would be consistent, correct?

19 MR. WELLINGTON: Objection.

20 A. Again, I could -- again, 08:22AM
21 thinking back ten years, be using that word,
22 again, also just he might be doing the same
23 work that he's always been doing but a
24 different business opportunity, so --

1 Q. Okay. When he went in to
2 significant detail about his business he was
3 talking about creating these robotic machines
4 and trying to find a market for them?

5 A. Is this back at that 12/12/97 --

6 Q. Yeah, back in the 12/97 note.

7 A. Correct.

8 Q. Okay. Now, under objective you
9 say, patient's thought processes were
10 connected, are not psychotic, although
11 somewhat, and then I appear to be missing a
12 word, somewhat something regarding his
13 business?

08:23AM

14 MR. WELLINGTON: Are we back to
15 December of '97 or where are we?

16 A. 12/12/97.

17 Q. Yes. What's the word I'm
18 missing?

19 A. There's no word in there, that
20 would have been the person typing the
21 dictation must not have understood a word
22 that I said and it looks like when I signed
23 off on it I never put a word in there, so --

08:24AM

24 Q. Let's see if we can work our way

1 through it. Patient's thought processes are
2 connected, which means he's thinking
3 linearly, correct?

4 A. Right.

5 Q. Right? And that his thought
6 processes are not psychotic, which means that
7 he's in some grasp of reality at that point
8 regarding his business, right?

9 A. Well, I don't know in terms of
10 the business situation, I'm just talking 08:24AM
11 about the patient in general. So his thought
12 processes are not psychotic, correct.

13 Q. His thought processes although
14 somewhat, and then something different,
15 regarding his business, centering around
16 financial stresses. Are we looking at
17 pressured or, I mean, how would you describe
18 the thoughts that reflect this, something
19 other than connected and related to his
20 financial stressors? 08:25AM

21 A. Initial thing that would come to
22 mind is somewhat focused with regard to his
23 business it might be the word, but --

24 Q. During the course of your

1 treatment, did you find Mr. Kearney to be
2 someone who would focus particularly on
3 certain events in his life to the exclusion
4 of others?

5 A. I don't know, that's a difficult
6 thing to answer over that many years because
7 I think we've, you know, my relationship with
8 him, we talked about a number of
9 circumstances, so --

10 Q. If his psychologist, Dr. Judd 08:26AM
11 McClure suggested that he had some
12 significant obsessive traits, that would be
13 consistent with your assessment of Mr.
14 Kearney?

15 A. I don't know up until that point
16 that I had, at least, used that sort of
17 terminology with him, so I don't know if that
18 was entering into my thought process, at
19 least by '97.

20 Q. Right. Up to that point, I 08:26AM
21 agree, you haven't used anywhere in the
22 notes. We did see a period of months early
23 on when he was focused, for want of a better
24 term, on the effects of the divorce, for

1 example?

2 A. I mean, I think, again, that
3 showed up in those, you know, notes during --

4 Q. For a period of --

5 A. Correct.

6 Q. -- nearly a year, and it was the
7 depression that he was feeling, or the
8 dysthymia that he was feeling and some of the
9 anxiety was all tied into his focus on that
10 event?

08:27AM

11 MR. WELLINGTON: Objection.

12 A. Again, I don't know that I can
13 say all, because I think in my mind I was
14 continuing to treat him for, you know, both
15 ongoing work stresses, and you know, the
16 family circumstances simultaneously, so --

17 Q. Right. Are you suggesting that
18 perhaps the work stresses were independent of
19 the financial, or I'm sorry, independent of
20 the family stresses, or was one maybe causing
21 the other?

08:27AM

22 A. I don't know that I, according
23 to my notes, necessarily connected, you know,
24 the relationship between the two. When I use

1 the word stressors I'm looking at that pretty
2 globally in terms of a patient's life, what
3 sort of stressors are going on, and to me
4 that would include work and family.

5 Q. Okay. Under your plan on the
6 December 12th visit, you were encouraging the
7 patient to continue to follow up with his
8 psychologist, right?

9 A. Correct.

10 Q. And you were -- you said the 08:28AM
11 patient is accepting the fact that his
12 depression may be quite chronic due to family
13 history. Are you talking about other members
14 of his family who have chronic depression or
15 mental illnesses?

16 A. Correct.

17 Q. Was it your assessment or his
18 that this may be a long term disability in
19 his life?

20 A. You know, that was my 08:28AM
21 terminology.

22 Q. Meaning that you felt the
23 depression would continue or that the
24 depression was untreatable?

1 A. Well, again, I think from a
2 family practice standpoint, you know, looking
3 at my notes, I'm trying to connect the fact
4 that this has now gone on for at least
5 several years that I've been taking care of
6 him.

7 Q. Uh-huh.

8 A. You know, we're seeing, you
9 know, a number of medications that have been
10 tried and used for treatment. In looking at 08:29AM
11 this family history, which I think I had
12 noted towards the start of this process that,
13 you know -- and that would fit with my
14 dysthymia, you know, diagnosis from the start
15 that there is a portion of this that may also
16 be inherited, and you know, we're just going
17 to have to contend with that in the long run.

18 Q. So the goal was then to accept
19 the fact that this may be an ongoing issue
20 but to return him to the highest level of 08:29AM
21 functioning possible?

22 A. Yeah. I mean, you know, at that
23 point my notes talk about just improving
24 compliance. Basically at that point there

1 were some changes in the medication
2 formulation which allowed us to do once a day
3 dosing, and again, trying to make sure that
4 he was getting the full benefits of his
5 medicines.

6 Q. Right, but the goal of the
7 treatment was to return him to the highest
8 level of functioning possible?

9 A. You know, I can say in there,
10 again, it's attempting to deal with it as 08:30AM
11 best as he can.

12 Q. Later on in that there's a
13 handwritten note that appears to be
14 December 12th of '97 where you make note of
15 seeing a psychologist once or twice a month,
16 work stress and down cycles, we know from
17 your --

18 A. What's the date of that, please?

19 Q. It appears to have the same date
20 stamp, December 12, '97; it's on a Christ 08:30AM
21 Hospital progress note form, but it's not
22 typed.

23 A. Oh, 12/12/97, yeah, that was the
24 initial just handwritten notes that I had

1 made prior to the dictation.

2 Q. Okay.

3 A. So, it was, you know, that was
4 simultaneous with that dictated note.

5 Q. You talk about the work stress
6 which he described earlier, that he may not
7 be able to find a market place for the
8 machines that he's building, that was causing
9 him stress, correct?

10 A. Yeah, in that part of the note, 08:31AM
11 again, I was kind of doing shorthand to
12 myself more as a reminder for the dictation.

13 Q. Sure, but the paragraph in the
14 dictation it says patient went into
15 significant detail about present work and
16 jobs and difficulty it has been for his
17 fledgeling business to survive. At the same
18 time, he has an expectation that it may not
19 survive due to the market place for this type
20 of work. That would be what your handwritten 08:32AM
21 note described as the work stress?

22 A. Work stress, correct, I thought
23 you were talking about the down cycles
24 comment, sorry.

1 Q. No; no. Down cycles is the next
2 question. What exactly is a down cycle?

3 A. I think, well, and that's what I
4 said. Looking at that, I think I was -- I
5 would have connected that in my dictation to
6 the, you know, he admits his depression
7 continues to be, you know, cyclical almost
8 week to week with days, you know, so that's
9 where I would have, in my notes made those
10 connections. The down cycles wasn't 08:32AM
11 necessarily a reference to what his business
12 was doing.

13 Q. Right; right. That's his own
14 functioning levels?

15 A. Correct. That's where I would
16 have --

17 Q. Where he functions for a while
18 and then he has a down cycle, and then he
19 returns to function, and then has a down
20 cycle, right? 08:33AM

21 A. Yeah, or at least go more into
22 depression, correct.

23 Q. Your assessment was he has
24 depression and situational stress, and the

1 situation he was focused on at that time was
2 trying to get this fledgeling robotic
3 business to survive?

4 A. Correct. Most of that was
5 around the business.

6 Q. Was it -- well, let me ask it
7 this way. I see some phone notes from April
8 and September of '98 concerning medications,
9 and at least in April of '98 was suggesting
10 he was only using the Paxil as needed? 08:33AM

11 A. Which note was that, excuse me?

12 Q. It appears to be a phone note
13 from April the 2nd of '98?

14 A. For the Xanax, not Paxil.

15 Q. The prescription for Xanax?

16 A. So Xanax he was using PRN, not
17 Paxil.

18 Q. Right. Xanax is the anxiety
19 issues?

20 A. Correct. 08:34AM

21 Q. And apparently he was not
22 needing that on a daily basis?

23 A. That's the way I would interpret
24 that, PRN means as needed.

1 Q. Okay. And September 18th of
2 '99, is that the next time you saw him, or
3 was the September of '98 --

4 A. I show a note from
5 September 22nd, '98, it says dictated, but I
6 don't see -- well, actually, it's misplaced.
7 I got some notes out of order here.

8 Q. Which is probably why I'm not
9 seeing it either.

10 A. It's actually in the copies, it 08:35AM
11 looks like it's forward a few pages, looks
12 like there's a November, yeah, here's
13 September. One side with the dictation and
14 the other side with the notes.

15 Q. May I see that a second because
16 I think I only got the one side.

17 A. Like I say, in my copies it got
18 stuck up in the 2000 notes, so there was a
19 page out of order there. So --

20 Q. Okay. That note is from -- 08:36AM

21 A. That ties into the -- there's a
22 stamped note and a little bit of handwriting.

23 Q. September 22nd?

24 A. '98, correct.

1 Q. Now, in your dictation of that
2 note, he is describing the financial
3 stressors, is that fair, at that point?

4 A. I mean, I made a note that he
5 had decreased his Effexor use because of the
6 cost of the medication as patient is still
7 struggling financially. He's going through
8 near bankruptcy with this business.

9 Q. Okay. So the business
10 apparently, the fledgeling business 08:37AM
11 apparently is not surviving very well causing
12 some financial stresses. In addition he
13 suggests that he may be going bankrupt
14 because of that business failure; is that
15 right?

16 A. Correct, that's all his history,
17 uh-huh.

18 Q. And he also gives you a history
19 of having had to file suit against one of his
20 customers because they weren't paying for the 08:37AM
21 machine?

22 A. Correct.

23 Q. So, those were the stressors
24 that he was dealing with and that you were

1 evaluating in November of '98, is it?

2 MR. WELLINGTON: September.

3 Q. September?

4 A. September 22nd, '98, correct.

5 Q. You saw him again, apparently, a
6 year later, is that the next visit?

7 A. Next note I have is dictation
8 9/27/99, correct.

9 Q. Did you have a note or were you
10 provided a note from Dr. Stephen Baxter who 08:38AM
11 saw him four days earlier, September 18th of
12 '99?

13 A. Just looking at that visit I
14 don't have a note about that letter, I can
15 see if that one is also in the chart.

16 Q. It's a chart note from Dr.
17 Baxter from University Hospital emergency
18 room.

19 A. Oh, the -- at the visit I made
20 note he was in the U.C. ER. Let me see if I 08:39AM
21 have the --

22 Q. It's not terribly important.

23 A. Okay.

24 Q. The note reflects that he

1 sustained an injury at work when cutting some
2 heavy plastic and the plastic jumped up and
3 apparently cut his fingers.

4 A. Correct.

5 Q. And then you saw him following
6 that as a follow-up visit to evaluate the
7 injury to his fingers, I would assume?

8 A. Suture removal, correct.

9 Q. So apparently at least a year
10 after the last note there was -- he was still 08:40AM
11 in the business of manufacturing something?

12 A. Again, from my notes, all I made
13 note of is that he was using a piece of
14 machinery, so I don't know if at that time,
15 at least, looking at my notes, I'm aware that
16 was the same business he had been in or not.

17 Q. Okay. The history from the
18 emergency room says the patient is a 46 year
19 old male, with a complaint of an injury to
20 his hand. He states that he was at work 08:40AM
21 cutting some heavy plastic on a saw and the
22 plastic jumped up and hit him in the hand.

23 So, again, you're right, we
24 can't tell what work, but it's some work he

1 was using a saw or machinery cutting some
2 heavy plastic and suffered an injury?

3 A. Correct.

4 Q. You followed up with him on the
5 hand, removed the sutures. Was it at that
6 point that you suggest maybe some physical
7 therapy because he was complaining of
8 stiffness, or was that later?

9 A. It looks like at that
10 September 27th visit I encouraged patient on 08:41AM
11 range of motion and to consider physical
12 therapy referral.

13 Q. Okay. And you put an addendum
14 to that note, the prior part of the note
15 above the addendum all deals primarily with
16 the injury to his fingers, right?

17 A. Correct.

18 Q. The addendum you talk about the
19 fact that you had been seeing him for chronic
20 dysthymia, he had been on Effexor for an 08:41AM
21 extended period of time, does seem to be
22 helping his mood, but the most significant
23 side effect is aggravation of sexual
24 function. Does that mean it's disrupting the

1 function, or it's increasing the drive, or
2 what?

3 A. Again, generally with those
4 medicines the primary thing is -- and I think
5 with the prior notes, it changes ejaculation
6 and sometimes can effect, and it would be
7 more likely to decrease drive or --

8 Q. Okay. So, by aggravating the
9 sexual function, that's what you're referring
10 to, it's causing more problems with it? 08:42AM

11 A. Correct.

12 Q. Right? And at that point you
13 started suggesting or maybe even began at
14 that time to switch him from Effexor to
15 Serzone?

16 A. Correct.

17 Q. Again, trying to maintain
18 treatment for the dysthymia but reduce the
19 side effects?

20 A. Correct. 08:42AM

21 Q. It appears you saw him October
22 of '99, is that a month later; about a month
23 later?

24 A. Correct, October 29th.

1 Q. When you talk about weaning him
2 off of Effexor and starting Serzone, Effexor
3 is a drug that you can't simply stop and
4 replace, is that what you're suggesting?

5 A. Correct. There are physical
6 withdrawal symptoms that people experience
7 with Effexor.

8 Q. So, you slowly reduce the dose
9 down to where you then can substitute the
10 Serzone for it?

08:43AM

11 A. Yeah, and usually it looks like,
12 usually my intention back then, I think by my
13 notes, was usually I'll start the Serzone
14 even at a point where he's still on the
15 Effexor so there is some cross over there.

16 Q. Which he felt the Serzone was
17 more effective helping him to sleep better,
18 his overall dysthymia symptoms were better,
19 somewhat better?

20 A. Yeah, and the history there it
21 says, yeah, he feels it is more effective and
22 has decreased some of the sexual side effects
23 he is having.

08:43AM

24 Q. Okay. Objectively at that visit

1 in October you're talking about the stiffness
2 in fingers from the prior work injury, and
3 then you made note that he's well kept,
4 meaning he's appropriately groomed and taking
5 care of himself; thought processes are clear
6 and linear, which means he's thinking
7 correctly?

8 A. Correct.

9 Q. And at that point at least he
10 didn't seem terribly depressed?

08:44AM

11 A. I just said unusually depressed,
12 correct.

13 Q. The next note that I have, and
14 this is perhaps not a note of yours, this is
15 Peg Ebert from the Christ hospital, in
16 November of '99, which apparently was the
17 physical therapist, Spectrum Rehabilitation
18 Services? I have very few questions about it
19 so I'll save you time.

20 A. It could be listed separately.

08:45AM

21 Q. In this one the patient reported
22 independent with self care and home
23 management, the patient is responsible for
24 multitasks at a factory for robotics,

1 suggesting perhaps his injury to his hand was
2 in this robotic factory, which was the
3 fledgeling business that he was struggling
4 with, correct?

5 MR. WELLINGTON: Objection.

6 A. Usually the physical therapist,
7 I think they are just more trying to note
8 with the work that he does, is he -- with his
9 injuries, were the injuries recovered that he
10 would be capable of doing that. So I don't 08:46AM
11 know if I would necessarily connect that
12 statement with that's where the -- where it
13 happened, I don't know.

14 Q. Okay. Well --

15 A. She's talking about activities
16 of daily living, which is kind of our jargon
17 for, again, you know, for his activities
18 which would include that sort of work.

19 Q. Right. But she certainly
20 wouldn't have come up on her own with the 08:46AM
21 concept that he was in a factory making
22 robotics, would she? She would have to get
23 that from him?

24 A. That was her history, correct.

1 Q. She also noted the patient was
2 attentive and interested during evaluation,
3 asked appropriate questions and processed
4 information correctly. Is that pretty much
5 what you observed of Mr. Kearney on your
6 visits, at least up to that point?

7 A. I don't think I would have any
8 disagreement with that statement that she
9 made.

10 Q. I see a progress note from you 08:47AM
11 on December the 20th of '99, would that be
12 the next visit? A dictated note, at least,
13 that I have, he was pleased with the change
14 to Serzone, it had reduced the side effects
15 that he had been experiencing on Effexor,
16 right?

17 A. Correct.

18 Q. He says he remains optimistic
19 that in spite of his injury on his left hand
20 recent interest in some of his inventions 08:47AM
21 would give him contracts, but he recognizes
22 there are safety issues with his left hand
23 operating certain equipment at the present
24 time. He's talking about potential up swings

1 in his business?

2 A. Again, that was history from
3 him, but yeah, remains optimistic, would have
4 been, you know, something that I would have
5 noted from him.

6 Q. Optimism is not something I
7 generally associate with depression. Is this
8 just simply one of his times when he's not in
9 the down cycle that you described?

10 A. And I think, again, that I would 08:48AM
11 in that sentence, connect it with, you know,
12 that someone, again, having some interest in
13 some contracts would be a financial, you
14 know, help to him, so --

15 Q. He's, throughout the course of
16 your treatment, been fairly focused on
17 financial issues?

18 A. I mean, there definitely is, you
19 know, notes along those lines even to the
20 point where I said he decreased his 08:48AM
21 medication because of that.

22 Q. From the very beginning it's one
23 of the subjects that he would bring up to you
24 is the financial situation?

1 A. Correct.

2 Q. Objectively you suggest that
3 he's a relatively intense white male?

4 A. Uh-huh.

5 Q. In trying to -- what do you mean
6 by relatively intense?

7 A. And again, I would relate that
8 to some of my previous comments in terms of
9 how he focuses on certain things, and I think
10 that's, you know, again, just an observation 08:49AM
11 in terms of the things do seem to come back
12 to center around a particular area where
13 this, you know, work situation and so forth
14 come up, you know, that's a pretty consistent
15 thing.

16 Q. So, there's a tendency on his
17 part to become focused on specific items.
18 For example, early on we saw regularly in
19 your notes discussions of the stresses, the
20 family stresses and the business stresses and 08:50AM
21 the stages at that time. Then there was the
22 focus on the robotics business and trying to
23 find a market for it, and concerned about the
24 failure, and again, the finances. And then

1 throughout the course he always has something
2 that is the central part of his thinking; is
3 that fair to describe?

4 MR. WELLINGTON: I'll object to
5 form.

6 A. Yeah, I don't know if I can word
7 it exactly that way. I mean, I think in
8 terms of how we take a history from people,
9 we do definitely focus on what we call a
10 chief complaint. So, you know, initially 08:50AM
11 always our office visits come back to what is
12 the person's, you know, initial, primary
13 expression. And like I say, most of that
14 shows up in my notes, you know, more as, you
15 know, what did the patient tell me that day,
16 so --

17 Q. Sure. But this patient, if you
18 follow your notes from kind of stepping back
19 and looking globally at them, he has focuses
20 at different times, on different issues, the 08:51AM
21 finances are always an underlying focus, and
22 then there's focus on the family history, and
23 then there's focus on the new business, and
24 then there's focus on something else?

1 A. Correct. And like I say, I
2 think from a family practice standpoint we
3 don't always assume that some of the other
4 stressors, even though we may have talked
5 about at a prior visit, went away, you know,
6 as much as at that particular visit wasn't
7 the primary focus.

8 Q. They are the ones that, when you
9 say the primary focus, that would be the
10 thing that's attracting his attention and his 08:51AM
11 energy?

12 A. At this particular visit with
13 me, correct.

14 Q. Right. And when you say he's
15 intense, he -- when he focuses, he really
16 focuses, sometimes to the exclusion of some
17 other things?

18 A. Since that's the first time I've
19 used this word with him, I don't know that I
20 would, you know, again, I was just making an 08:52AM
21 observation at that particular time.

22 Q. All right. I then see a note
23 on 9/26 of 2000, is that the next visit?

24 A. Actually, I have one April 10th

1 of 2000.

2 Q. Ah, yes, okay. I missed that
3 one. Basically just a follow up on
4 medications, there's no real history or
5 complaints. He does tell you that he's
6 taking Metabolife in April of 2000?

7 A. Correct. I do make that note.

8 Q. I may only have the handwritten
9 portion of that, do you have a typed?

10 A. Yeah, I do have a dictation. 08:53AM

11 Q. Can I see it for a second?
12 We'll have to maybe get a new set of copies
13 that have both sides here.

14 MR. WELLINGTON: What's the date
15 on that one?

16 A. November 9th -- I'm sorry, it is
17 April 10th of 2000.

18 (Off the record discussion.)

19 Q. All right. When we left off,
20 Doctor, we were talking about the April 10th, 09:00AM
21 2000 progress note. I appreciate you getting
22 me a copy of the typed one. In that there
23 was a follow up on his hands and fingers from
24 the prior injury, agreed?

1 A. Yeah, follow up on meds and then
2 follow up on the crush injury, correct.

3 Q. Told you about seeing Dr. Judd,
4 that he's been seeing for a number of years
5 for his chronic depression and dysthymia and
6 partial disability?

7 A. Correct.

8 Q. And then he told you he
9 continues to be self-employed and he brought
10 in some pictures to show you the kind of work 09:00AM
11 he had been doing, pictures of machines he's
12 been making, that kind of thing?

13 A. I believe it was at that time.

14 Q. Okay. Your assessment was he
15 had chronic depression and dysthymia, he had
16 some weight loss, which -- oh, you were
17 following up on his medical effects. He had
18 the injury to his left hand, and a new issue
19 is hypercholesteremia?

20 A. Right. That would have been 09:01AM
21 based on some of his prior labs, correct.

22 Q. Okay. That is a -- this was
23 what they used to call hardening of the
24 arteries, you get some cholesterol build up

1 in the arteries, it tends to decrease blood
2 flow?

3 A. This would just be noting that
4 he had high cholesterol levels, yeah.

5 Q. The issue with cholesterol is
6 that you don't want it to develop to the
7 point that it blocks up arteries to the heart
8 or cause heart attack or whatever, where you
9 have to get a stint or whatever, correct?

10 A. Correct. 09:01AM

11 Q. Did you put him on medication
12 for that, for the high cholesterol?

13 A. At that time, no.

14 Q. Recommend change in diet?

15 A. We were checking his labs at
16 that point, correct.

17 Q. Okay. Did you continue with the
18 Serzone and the Xanax?

19 A. Yes.

20 Q. You will continue to monitor the 09:02AM
21 DJD changes. What are DJD changes?

22 A. Degenerative joint disease
23 changes. It looks like up in my review of
24 systems, he had noted some pain in a great

1 toe. Orthopedic doctor had diagnosed him and
2 so I didn't put that in my diagnosis, but
3 just made more of a note of that for me.

4 Q. Maybe developing some arthritis?

5 A. Correct.

6 Q. Okay. A little young for that,
7 isn't he?

8 A. Sometimes that could be based
9 off of old injuries or other things, so --

10 Q. Okay. Then September 26th of 09:03AM
11 2000, are we in the same note here where
12 you're going to repeat the lipid profile and
13 the cholesterol test?

14 A. September 26th, 2000, yes,
15 that's the next visit, correct.

16 Q. So you're following up on the
17 high cholesterol, you're also talking about
18 increasing the dose of Serzone. Is he having
19 some increased depression at that time or --

20 A. In looking back at my notes, he 09:03AM
21 had a nephew that was killed in an auto
22 accident and he was also anticipating a move
23 back to the Wooster area. And then there
24 was -- that involved, then, a breaking up of

1 a girlfriend relationship, so there was a
2 number of other situational stressors coming
3 in at that point that was involved with the
4 medications. In looking at the medication
5 change it looks like, at least in my notes I
6 just discussed bumping it up, correct.

7 Q. Okay. So, he's dealing with a
8 break up of a girlfriend, what, several
9 months or longer?

10 A. Well, according to my notes it 09:04AM
11 says this is going to involve breaking up if
12 he moved, is kind of the way I worded it, so
13 I don't know if that actually happened.

14 Q. And then the death of his nephew
15 that he was taking hard, right?

16 A. Yeah. Objective part I did talk
17 about him expressing his grief.

18 Q. So we have some increased
19 stressors and response is to increase the
20 Serzone to help deal with them during that 09:05AM
21 period of time?

22 A. Yeah. It looks like I discussed
23 increasing it at that point in time. Let me
24 look if he was at 400 milligrams prior, I did

1 take him up to the maximum dose of 600
2 milligrams.

3 Q. Was this primarily to deal with
4 the increased situational stresses at that
5 time related to the family and the move?

6 A. In my plan, I mean, I stated
7 overall depression, but also decreasing some
8 of the anxiety symptoms, so --

9 Q. The next note I see is January
10 of 2001, about three months later? 09:06AM

11 A. Correct.

12 Q. Right?

13 A. January 10th, 2001.

14 Q. Okay. Is that note dictated as
15 well or is it simply written?

16 A. All I have is a handwritten note
17 that time.

18 Q. Okay. Good. We're on the same
19 page then. At that time he told you he had
20 moved to Wooster. He said he hasn't been 09:06AM
21 working for three months due to financial
22 uncertainty. Did he describe what that
23 meant?

24 A. Looks like in my notes I don't

1 have any other detail about that, so just
2 history from him.

3 Q. Okay. But we knew he was having
4 difficulties with the business all along and
5 that he had filed suit against one customer
6 that wasn't paying for the machine that he
7 built, right?

8 A. Correct.

9 Q. Because of that circumstance, he
10 says he's more depressed and anxious but he 09:07AM
11 still has hopes for securing a patent on one
12 of the machines that he built, right?

13 A. Correct.

14 Q. In your review you found that
15 his thoughts were appropriate to the
16 circumstances and his thought processes were
17 clear but that he was -- he had a, is that a
18 sad affect?

19 A. Yeah, that was in the physical
20 exam part, correct. 09:07AM

21 Q. Your assessment --

22 A. Sad affect.

23 Q. Your assessment was chronic
24 depression and anxiety, exacerbated by

1 situational stress?

2 A. Correct.

3 Q. You also suggested he

4 discontinue taking the Metabolife because it
5 might be aggravating his anxiety, right?

6 A. Correct.

7 Q. At that time, again, his focus,
8 as it has been the past several visits, has
9 been on the finances and issues regarding his
10 business and the lack of success in the
11 business?

09:08AM

12 A. There was also the history line
13 in terms of where he had stated in terms of
14 increased stress primarily due to dealing
15 with disability company.

16 Q. Okay. Trying to find that line.

17 A. Up in the history under he has
18 moved to Wooster, not working.

19 Q. Not working for three months due
20 to financial uncertainty, increased stress
21 due to dealing with disability company. Did
22 he describe what his dealings were with the
23 disability company, or what his concerns
24 were?

09:08AM

1 A. Again, outside of that statement
2 I don't have anything else listed for that
3 visit.

4 Q. Okay. Shortly after that he
5 asked you to send a copy of his records to
6 attorney Bruce McIntosh and to him?

7 A. Maybe it's in a different part
8 of the chart, but --

9 Q. Yeah, dated 1/10/01?

10 A. It must have been put on the 09:09AM
11 other side of the chart here. I'm assuming
12 it's also in here just filed with the
13 progress notes here, so let me see if I have
14 that. I don't see that particular release
15 but it may be on the other side of the chart.

16 Q. For the record, it's Bates
17 stamped Lehenbauer 002. The next thing I see
18 in your chart is a letter from Mr. Kearney to
19 you dated March 26th of '01?

20 A. Correct. 09:11AM

21 Q. Which he suggests that his
22 stress is down from a few months back, that
23 he was able to reduce his use of Xanax,
24 right?

1 A. Correct.

2 Q. And he also adds a PS telling
3 you that he had been sent to a couple of
4 doctors for testing and assessment. This was
5 done for the -- and I can't read the bottom
6 of it, can you?

7 A. It was -- and I actually wrote
8 when I initialed this one, in parenthesis put
9 missing info, so, yeah. The line got cut off
10 after this was done for the partial slash, 09:12AM
11 looks like report, but underneath that --

12 Q. Probably for the partial
13 disability claim, at least that's a
14 reasonable assessment?

15 A. Yeah, I would assume since it
16 was faxed, I think that just got cut off.

17 Q. Right. And in June of '01, he
18 actually brought in the reports of the
19 medical examiner, the psychiatric examiners
20 who did the IMEs, right? 09:12AM

21 A. Yeah, it appears that I got
22 those reports at that time.

23 Q. Do you know whether he brought
24 them in or whether they were sent to you

1 actually by the insurance company?

2 A. I think at that time, because it
3 looks like I labeled and reviewed them the
4 same date, so I think they were probably
5 brought in by him and he we made copies or he
6 gave me copies.

7 Q. Did the insurance company ask
8 for your views of the reports to your
9 recollection?

10 A. Not that I'm aware of. 09:13AM

11 Q. When you reviewed them, did you
12 find them to be appropriate, thorough
13 evaluations of Mr. Kearney?

14 A. Yeah, at that particular visit,
15 looks like copies of the report in my notes,
16 at least, again, I say copies of reports
17 given and impressions reviewed. And at the
18 bottom of the note in the plan I said, will
19 review written reports in depth and sign off
20 on these reports when completed. So that 09:13AM
21 would have been later, that was to me.

22 Q. Yeah, who were you going to sign
23 off for?

24 A. To me, yeah, just more because

1 usually someone presents me with a, you know,
2 the length of those reports it would have
3 been difficult to, you know, review it as
4 thoroughly as I would like until after hours
5 or later.

6 Q. And both of those reports did,
7 in fact, find that he had some psychological
8 issues that were causing some impairments in
9 his function, right?

10 A. Correct. 09:14AM

11 Q. In that note of June 29th, 2001,
12 which would be your next visit with him, when
13 he would have brought these reports for you,
14 he said that apparently in spite of the fact
15 that these evaluations found that he was
16 entitled to benefits and still impaired, that
17 he felt threatened by the disability insurer
18 and that he had looked into legal recourse.
19 Did he tell you what the problem was?

20 A. At least by my notes at that 09:15AM
21 time, I don't have any other detail of that.

22 Q. Okay. Did he tell you he was
23 receiving benefits and had been for years?

24 A. Again, by my notes, I don't make

1 note of the benefits.

2 Q. Okay. Later on in that same
3 note he says he was anxious about the
4 continued harassment from the disability
5 company. And did he tell you what they were
6 doing to harass him other than asking him to
7 have an independent medical examination?

8 A. Again, ask that question again.

9 Q. Yes. Under the physical exam
10 you say alert, anxious about continuing, and 09:16AM
11 then you put in quotes, which apparently it's
12 his word, harassment?

13 A. Continued harassment from the
14 disability company.

15 Q. Did he tell you what the
16 harassment was? I mean, you know that they
17 had sent him for independent medical
18 examinations, was that the harassment that he
19 was talking about?

20 A. Again, not from the note, but 09:16AM
21 just recalling, I think he felt, you know,
22 the sense being pursued or questioned about
23 his -- about his disability. But again
24 that's -- I don't know if that's from, you

1 know, from memory versus, like I say, from
2 that note, I'm putting it in quotes primarily
3 because that's how he's presenting it to me.

4 Q. Have you dealt with people on
5 disability other than Mr. Kearney?

6 A. I've had other patients with
7 disabilities, correct.

8 Q. Fairly common for the insurance
9 company to question and ask for notes and
10 have independent medical exams, isn't it? 09:16AM

11 MR. WELLINGTON: Objection.

12 A. Not uncommon to have other
13 outside evaluations, correct.

14 Q. Okay. Later on in that note you
15 talk about the absence of clear manic
16 features, and on the other side under plan
17 you talk about discussed mood stabilizers.
18 Was there a potential consideration at that
19 time that there may be a bi-polar or manic
20 depressive aspect to his illness? 09:17AM

21 A. Actually, I think that was first
22 raised in those records from the independent
23 examiners.

24 Q. So those doctors were

1 questioning him?

2 A. Yeah, those doctors raised that
3 possibility. And I think in my notes I was
4 stating that clear manic features, to me, and
5 but psychologists, and I may have left out a
6 word, has not been concerned either with
7 bi-polar. So, I think at that point I'm just
8 trying to balance this information that I had
9 just received with, you know, to that point
10 how I had been treating him.

09:18AM

11 Q. Now, bi-polar, as I understand,
12 is going to extreme highs, from manic, full
13 of energy, full of life, full of everything,
14 and then down into dark depression and back
15 up again, right?

16 A. That can be cyclical -- cyclical
17 features, correct.

18 Q. In his case we had the
19 depressive or down cycles that you described,
20 but he never really rose to the manic level
21 that you --

09:18AM

22 A. And that's what I was saying,
23 yeah, in my exam to me, not clear manic
24 features, correct.

1 Q. So, the cycles were there, but
2 the heights of manic, which would be required
3 for a bi-polar diagnosis, were absent?

4 A. In my mind I didn't have a
5 history of mania, correct.

6 Q. Okay. From that visit forward,
7 is it fair to say that every visit that he
8 had with you, or nearly every visit that he
9 had with you demonstrated a focus on the
10 disability insurance and his disagreements 09:19AM
11 with them?

12 A. And I would have to review each
13 of those office visits since I'm also foggy
14 on things that --

15 Q. Let's work our way through them,
16 but keep that in the back of your head. The
17 next visit is March 15th, 2002; is that
18 correct?

19 A. Correct.

20 Q. Very anxious today? 09:20AM

21 MR. WELLINGTON: What's the
22 date, I'm sorry?

23 A. March 15th, 2002.

24 Q. Very anxious today but he's been

1 off the Serzone dose for two nights?

2 A. Correct.

3 Q. So, he had stopped taking the
4 medication, or had run out of it?

5 A. At that point I don't have an
6 idea of whether he just ran out or hasn't
7 taken it.

8 Q. Okay. Normally takes Xanax but
9 limiting it to avoid over use, so he's kind
10 of --

09:20AM

11 A. All by history.

12 Q. Kind of adjusting his own
13 medications as he sees?

14 A. Well, the Xanax was PRN
15 previously, prescribed as needed anyways.

16 Q. Now it says, now there's no
17 business presently secondary to the increased
18 stress related to the disability, right?

19 A. Yep, that's a history from him.

20 Q. That's the history from him. 09:21AM

21 Now, in the prior several notes he's been
22 talking about the fact that his business is
23 down, he's got nobody to sell these machines
24 to, he couldn't find a market for it, right?

1 And his only hope was to get a patent for
2 this machine, do you remember those notes?

3 MR. WELLINGTON: Objection.

4 A. Yeah, it wasn't the very last
5 visit, but I think I recall the visit prior.

6 Q. Now, he's relating the loss of
7 business to his increased stress levels
8 because of this disability insurance in the
9 note of March '02?

10 A. The 15th all I said was related 09:21AM
11 to disability, and again, I didn't say
12 necessarily disability insurance company
13 either.

14 Q. Well, if we look down further in
15 the note, he sought out help from national
16 experts to support his case of disability;
17 he's preparing for a lawsuit.

18 A. Preparing self for lawsuit,
19 correct.

20 Q. Right. On the other side is, 09:22AM
21 thought processes are clear and linear, but
22 very focused on the effect of life from his
23 disability company, right?

24 A. Which side are you on on that

1 note?

2 Q. I was just reading down.

3 A. Focused on effect of life --

4 Q. Again, I was just reading --

5 A. -- from his disability.

6 Q. Basically this note was, my life
7 is awful at this point, and it's all because
8 of the disability company, right, March of
9 2002?

10 A. I mean, most of that, again, 09:22AM
11 ties around to the -- I mean, notes about the
12 anxiety, in my mind, I would have been
13 thinking also about, you know, if he hadn't
14 taken his medicine for a couple days. You
15 know, this case obviously got some lines from
16 me, so, but in terms of my physical exam,
17 thought processes were focused on the effect,
18 I don't know if I -- effect of life, but
19 probably on his life from disability.

20 Q. I'm sure, yeah, but the overall 09:23AM
21 picture, March 15th, 2002, that he was
22 presenting was that his business is down, his
23 anxiety is up, his depression is worse, he's
24 very stressed, all because of his disability

1 insurance?

2 A. I mean, and again, the line that
3 I used in terms of the -- at the top of that
4 note just related to disability. I'm not
5 sure I was thinking his disability in regards
6 to his depression versus, you know -- but I
7 guess what I hear you asking is it says
8 disability insurance company and I'm
9 separating those two, I guess, to some
10 extent.

09:24AM

11 Q. I understand that you are and
12 here's where my question comes in, why all of
13 a sudden is his stress increase related to
14 his disability? He's had this disability
15 since 1993?

16 A. Again, trying to think back to
17 2002, you know, what I was stating there, and
18 this is more coming from him, no business
19 presently, secondary to increased stress
20 related to disability.

09:24AM

21 Q. He was telling you that the
22 disability and the battle with the insurance
23 company is so stressful that he can't do any
24 business, right?

1 A. And again, it comes back to --
2 and I didn't put it in quotes, so I don't
3 know if those are his words or my
4 interpretation of his words. So at that
5 point all I can say is it's my interpretation
6 of taking his history from him.

7 Q. But his focus in everything he
8 told you below, because you wouldn't have
9 known it otherwise, was what he perceived as
10 an on -- a soon to be legal issue with the 09:25AM
11 disability insurer?

12 A. And I think I had made some
13 notes in prior visits about the possibility
14 of lawsuits, or he had mentioned that there
15 was something ongoing, so --

16 Q. Did he tell you whether or not
17 he was being paid his benefits throughout
18 this whole period of time?

19 A. I don't know if I have that in
20 my notes or not to this point in time, so -- 09:25AM

21 Q. Were you under the impression
22 that the disability company was not paying
23 benefits, that's what the fight was about?

24 A. I think my feel, at least,

1 looking at these notes was more that -- more
2 of the feeling of harassment, doesn't really
3 have to do with whether he was receiving
4 disability or not, so --

5 Q. Okay. But you don't know as we
6 sit here what this harassment was other than
7 what would be normal asking for independent
8 medical examinations and some supporting
9 documents, right?

10 A. I'm not necessarily connecting 09:26AM
11 those two, I mean, the independent
12 evaluations I looked at as just being
13 something that his insurance company had
14 asked him to do to verify, you know, the
15 diagnosis that I had been treating him for,
16 and his psychologist had been treating him
17 for. I would, in looking back at those
18 notes, still separate out that his feeling of
19 harassment was really a separate issue, not
20 having to do those things, or having to be 09:26AM
21 evaluated, but was something still different.

22 Q. The very first time that he
23 starts mentioning anything about the
24 disability insurance company is after this

1 request for an independent medical exam, is
2 it not? Prior to that IME, in your notes,
3 there's no mention of it at all, is there?
4 Other than the fact that he's making a claim
5 for it?

6 A. I mean, that was in terms of
7 using the word harassment showed up in
8 June 29th, 2001.

9 Q. Which was after the independent
10 medical exams?

09:27AM

11 A. Right. I mean, that's the first
12 time I saw those, correct.

13 Q. And from that date when he told
14 you he had to do the independent medical
15 exams forward, your notes, at least to where
16 we are now in March of 2002, the notes are
17 reflecting his focus as we've discussed in
18 the past, now being on issues with the
19 disability insurance carrier?

20 A. You know, the January 10th of
21 2001, which would have been before, I think
22 before those evaluations, again, I had that
23 line in there, increased stress primarily due
24 to dealing with disability company, so --

09:28AM

1 Q. Uh-huh.

2 A. I mean, the timing, I mean,
3 sounds like he and I had talked about it in
4 January 10th, or he had at least mentioned it
5 to me at that time, and again, I don't know
6 that I was aware that he was going to get
7 other evaluations until he showed up at that
8 next visit, so --

9 Q. Yeah. What are the dates of the
10 evaluations?

09:28AM

11 A. I think they were March, I think
12 the one from the psychiatrist was March 19th,
13 and there was another one that was dated
14 March 4th.

15 Q. Uh-huh. You agree those would
16 have had to have been set up in advance?

17 A. I can make that assumption, all
18 I'm saying is that --

19 Q. Right.

20 A. -- at the January visit there
21 wasn't any mention of that to me.

09:29AM

22 Q. No mention --

23 A. That I have in my notes.

24 Q. -- of any independent medical

1 exams?

2 A. That I have in my notes.

3 Q. Very good. Next visit is

4 October 2002; October 22nd?

5 A. I have a visit March 15th of

6 2002?

7 Q. I'm sorry, yeah, that's the one

8 I thought we were just discussing before.

9 Very focussed on the effects on his life of

10 his disability company. Isn't that the one 09:29AM

11 we were just discussing?

12 A. I'm sorry.

13 Q. The next visit is October 22nd,

14 2002?

15 A. Correct.

16 Q. In that he's complaining that

17 he's still on edge concerning the battles

18 with the disability company. Has attorneys

19 involved in the process, getting expert

20 opinions, right? 09:30AM

21 A. Yes.

22 Q. On this visit he doesn't even

23 talk about his business, now the only focus

24 is on the disability company, right?

1 A. Yeah. I mean, I made a note
2 that was under the physical exam part in
3 terms of what he's telling me and the history
4 part of depression continues to be monitored
5 by psych, which I don't really clarify in
6 the -- the note under the physical exam.

7 Q. Uh-huh. But that's, I mean,
8 obviously --

9 A. His expressions are primarily
10 focused around these battles with the 09:30AM
11 disability company.

12 Q. And he was intense about it,
13 wasn't he?

14 A. I put remains on edge.

15 Q. We go from there to November of
16 '03?

17 A. Yes.

18 Q. Again, he no longer talks about
19 his business, he no longer talks about his
20 family, he no longer talks about his 09:31AM
21 girlfriend, his focus is once again on the
22 disability battle, right?

23 A. Well, in that note -- we're at
24 November 25th of 2003, correct?

1 Q. Correct.

2 A. Just to clarify, I mean, in that
3 note I do have he is remarried and going to
4 infertility work up. So I would have also
5 included that kind of as a stressor and I did
6 note in my assessment and plan with multiple
7 stressors.

8 Q. Looking for the --

9 A. On that note it's towards the
10 bottom left there.

09:32AM

11 Q. Okay. I'm looking, 58 years
12 old?

13 A. Brother with coronary artery
14 disease, five vessel cabbage bypass.

15 Q. Also has positive --

16 A. -- family history in father and
17 paternal aunt, I was connecting that with the
18 coronary artery disease part.

19 Q. Okay. His weight is up

20 11 pounds, still pending lawsuit with

09:32AM

21 disability battle continues to be stressful
22 and has --

23 A. And followed by psychologist.

24 Q. And followed by psychologist.

1 A. Still AM fatigue with some
2 relief, and present Wellbutrin and then
3 remarried and going to infertility work up.

4 Q. So as you're asking him what's
5 going on in his life, the first thing he
6 tells you is he's got this ongoing battle
7 with the disability company, very stressful,
8 causing him all sorts of angst, and that he's
9 still tired in the morning. And oh, by the
10 way, I got married and I'm going to a 09:33AM
11 fertility expert. Kind of in that order,
12 isn't it?

13 A. Yeah, the chief complaint was
14 still his low energy most of the time.

15 Q. Which he relates directly to
16 this battle?

17 A. Well, again, in terms of the
18 order of my notes, the next thing I list
19 after that had to do with the coronary artery
20 disease of his brother. So, and then the 09:34AM
21 weight gain, and then again, the still
22 pending lawsuit at that point, so --

23 Q. Your assessment and impression,
24 chronic depression with multiple stressors

1 and then specifically trial?

2 A. Well, trial change to
3 Wellbutrin.

4 Q. Oh, I'm sorry, I misread that.
5 Thank you. Trial change to -- so that goes
6 to the next line?

7 A. Correct.

8 Q. Okay. What was the next time
9 you saw Mr. Kearney?

10 A. November 25, 2003, looks like 09:34AM
11 the next visit is October 5th, 2004.

12 Q. Did he send you or bring you in
13 some disability forms signed by Dr. Judd?

14 A. I have some forms that were
15 signed by Dr. Judd that I initialed
16 July 12th, '05.

17 Q. Do you see the one from the
18 February 11th, '04?

19 A. There was -- those are all
20 together and I don't -- what I don't know is 09:35AM
21 whether those all came in together. I have
22 one list of February 11th of '04; I have one
23 5/10 of '04; looks like 8/17/04.

24 Q. I would like to focus on the

1 February 11th, '04 for the moment.

2 A. February 11th of '04, okay.

3 Q. Uh-huh. Under the additional
4 comments --

5 A. Okay.

6 Q. -- box nine, patient distressed
7 by continued legal delays which are intended
8 to cause further emotional distress and
9 financial burdens. Did he ever complain to
10 you or suggest to you that the speed with
11 which the court dealt with the case was --
12 let me ask it a different way. Did he ever
13 suggest to you that the court itself was
14 intending to cause him harm?

09:36AM

15 A. Not that I'm aware of from my
16 notes.

17 Q. Okay. So then we would assume
18 that in his view at least, any delay in the
19 legal process was caused by the disability
20 company, or you don't know?

09:37AM

21 A. I don't know since that's Dr.
22 Judd's --

23 Q. Okay. Let's go to your visit,
24 October 5th of '04.

1 A. Okay.

2 Q. His wife is now five months
3 pregnant, which he says is stressful but he's
4 happy about it, right?

5 A. Correct.

6 Q. Very next thing, ongoing legal
7 hassles with his disability insurance,
8 supposed to go to trial next month or so but
9 attorney suspects settlement?

10 A. Correct. 09:37AM

11 Q. Again, this becomes a focus of
12 his history and his discussion with you and
13 what he claims is part of his ongoing
14 problem?

15 A. Well, again, I list multiple
16 stressors there in the physical exam part.

17 Q. Depressed affect?

18 A. Yeah, and flat emotionally, with
19 intensity primarily arising as he discusses
20 the lengths the insurance company has probed 09:38AM
21 him and his life; so that was again --

22 Q. So that's his focus. His focus
23 is his disability case?

24 MR. WELLINGTON: Objection.

1 A. In that note I was talking more
2 in flat emotionally speaks, in terms of
3 someone's depression, not showing much
4 emotion, but that his intensity rose as he
5 talked about that particular circumstance,
6 correct.

7 Q. Which is some indication of his
8 focus, isn't it? Touching upon the thing
9 that he's most concerned about, most intense
10 about?

09:38AM

11 A. Again, I related it primarily,
12 it raised his intensity as he discussed that.

13 Q. Okay. Did he appear to you as
14 we are going through this now, remember since
15 the IME, every one of your notes so far has
16 suggested as a primary part of the history,
17 his battle with the disability company, has
18 it not?

19 A. I would state that it's
20 always -- it seems to be included in each of
21 those notes, correct.

09:39AM

22 Q. It takes up most of each of
23 those notes, doesn't it?

24 MR. WELLINGTON: Objection.

1 A. Again, the way I, from a family
2 practice standpoint, take a note, I mean, I
3 usually, as I come into a room and most of
4 these are the handwritten notes, I'm
5 following initially just how patients tell me
6 things, so it shows up in each of those
7 notes. But like I say, in some of these I
8 tend to focus on first what sort of symptoms
9 he's having related to his depression, so --

10 Q. I understand that. My point is, 09:39AM
11 and I think you get it, from the time of the
12 independent medical exams forward, a great
13 deal of his history to you, the thing that
14 he's focused on and intense about is this
15 battle with the disability company?

16 MR. WELLINGTON: Objection.
17 Asked and answered.

18 A. I think what I can say looking
19 at these notes is it definitely creates the
20 most intensity for him, correct. 09:40AM

21 Q. We go to the note of July 12th
22 of '05, which I believe is the next one.

23 A. Okay.

24 Q. Very first thing out of his

1 mouth in the history, still waiting for
2 summary judgment by the judge due
3 September '04, but delayed?

4 A. Well, actually the top of that
5 note has continued to follow up with
6 psychologist but plans to change to one in
7 Columbus closer to home, and again, a med
8 check, and then the next part of that note
9 is, still waiting for summary judgment,
10 correct.

09:41AM

11 Q. Right. But the first time you
12 talk about anything going on in his life
13 other than treatment is his case first thing
14 he raises to you, right?

15 MR. WELLINGTON: Objection.

16 A. It's hard for me to -- I don't
17 know if I can separate that in the question,
18 but again, I just tend to list things and
19 we're talking first about medication and his
20 follow up with the psychologist, and then
21 goes into this, right where I stated is still
22 waiting.

09:41AM

23 Q. Uh-huh. Very next paragraph you
24 talk -- he's creating -- he now has marital

1 stress because of his disability case?

2 A. Yeah. I stated creates some
3 marital strain due to his increased anger
4 about the situation above, correct.

5 Q. Right.

6 A. And has a new child.

7 MR. WELLINGTON: That was
8 December '05, right?

9 A. Excuse me, July 12th of '05.

10 MR. WELLINGTON: I forgot the 09:42AM
11 month.

12 Q. When was the next time you saw
13 him after July of '05?

14 A. Office visit was April 5th of
15 '06.

16 Q. Uh-huh. And after you review
17 the medical with him, the fact that he's
18 having low back pain and so forth, and
19 obviously you ask him about the low back
20 pain, he told you about his disc surgery in 09:42AM
21 '93, right?

22 A. Correct.

23 Q. As soon as you got into the
24 social history, he began, again, talking

1 about his case and how he thinks the first
2 part has been decided in his favor and he's
3 now, something, his counter suit?

4 A. I think the word is pursuing
5 there.

6 Q. Pursuing his counter suit?

7 A. Yeah.

8 Q. So at this point, the case is
9 going on in which he's suing the insurance
10 company after having the summary judgment he 09:43AM
11 was waiting for before, if you know -- do you
12 know what, that was a bad question.

13 Again, he's focused on what's
14 going on in his case?

15 A. Well, like I say, it's the third
16 thing listed there. We do the med check, the
17 low back pain, you know, and that's the last
18 part of how I list my history there, correct.

19 Q. Uh-huh. Would you agree that
20 he's still focused on the case? 09:43AM

21 A. I mean, it's still there,
22 although in that time, the low back pain gets
23 thrown in there, it looks like, you know, my
24 physical exam was a little more focused on

1 the physical part at that time.

2 Q. Sure. At that point he had some
3 new physical complaints, his back was acting
4 up again, he had some additional problems?

5 A. Correct.

6 Q. Is the next visit, the April
7 '07?

8 A. Yes.

9 Q. Once again, you renew the
10 arthritis medication?

09:44AM

11 A. Correct.

12 Q. Is that something that you
13 prescribed for him?

14 A. Yes, I gave it to him, a
15 prescription for the Voltaren there
16 April 5th.

17 Q. Preceding August did you put him
18 on a medicine called diclofenac?

19 A. Diclofenac is the -- would be
20 the generic of the Voltaren, so April 5th it
21 looks like I wrote a prescription at that
22 time for that medicine for refills. You
23 stated, was there one in August, did you say?

09:45AM

24 Q. Yeah, it appears August of '06,

1 at least in your prescription refills.

2 A. Yeah, that may have been one
3 that was called in from an insurance -- or
4 from the pharmacy it looks like. So, yeah,
5 it looks like we refilled the same
6 prescription.

7 Q. Okay. So he got diclofenac
8 August 20th, '06, and it was refilled when,
9 April of '07?

10 A. Originally I gave it to him 09:45AM
11 April 5th, '06, at that visit.

12 Q. Okay.

13 A. With refills, and then in August
14 on the refill, either the pharmacy or he
15 called in and asked for more refills on the
16 die -- diclofenac, which is the same as the
17 Voltaren.

18 Q. So, he has April, May, June,
19 July, August he would need refills because it
20 was four months out? 09:46AM

21 A. Right.

22 Q. And you gave him six refills
23 from there, which would be six more months of
24 it?

1 A. It was one a day, so number 30,
2 correct.

3 Q. So that would take him through
4 April of '07, wouldn't it?

5 A. Well, that was August 20th,
6 September, October, November, January,
7 February, more February.

8 Q. February?

9 A. Assuming he was taking it every
10 day.

09:46AM

11 Q. Do you see where he filled it
12 in, or he asked for refills in February?

13 A. Next refill we have on the list
14 was April 10th.

15 Q. Of '07?

16 A. '07, correct.

17 Q. So he's been on it continuously
18 since April of '06, a year?

19 A. Fairly continuously, right.

20 Q. Uh-huh. You found in April of
21 '07 he was under care for a torn rotator
22 cuff. Did he tell you how he tore his
23 rotator cuff?

09:47AM

24 A. I didn't have that in the

1 history, I don't recall him giving me a
2 specific history on that.

3 Q. Okay. He tells you he's still
4 seeing a psychiatrist, continues to deal with
5 fatigue and anxiety, reports from
6 psychiatrist seem to feel that the meds are
7 appropriate. The psychiatrist is agreeing
8 with you on your medical regime?

9 A. Well, that was through the
10 patient, correct. In the parenthesis there 09:48AM
11 was reports from the patient from the
12 psychiatrist, I don't know that I had a
13 direct psychiatric note other than what the
14 patient told me.

15 Q. Okay. He still says the ongoing
16 legal wrangling, even with agreement that the
17 patient is disabled, stress high, has
18 financial strain, family strain, had to sell
19 home, unable to work, right?

20 A. And move, and unable to work, 09:48AM
21 correct.

22 Q. Did he describe -- let me ask
23 you this way, was he telling you that because
24 of this ongoing battle that he was waging

1 against the insurance company, that he was so
2 stressed that all these other things were
3 happening?

4 A. Again, I think in my mind I look
5 at them as just multiple stressors, you know.
6 In other words, there was the financial
7 piece, there was the, you know, not working
8 piece, I mean, the family piece, the moving
9 piece, I mean, you know, the -- I don't know
10 if I would in that note say -- state it all 09:49AM
11 falls off of one particular thing, but
12 it's -- but definitely the legal wrangling, I
13 think I would have interpreted how he was
14 talking to me about it.

15 Q. Still his focus?

16 A. I mean, not obviously, I think,
17 and that was the first visit that actually I
18 met his wife, and his, you know, his daughter
19 at that time, and you know, it was a pretty
20 emotional visit for him. 09:49AM

21 Q. Would you agree with Dr. Judd
22 that Mr. Kearney is demonstrating obsessive
23 traits with regard to this battle with the
24 insurance company as he describes it?

1 A. I don't know that I can say
2 obsessive just because I've never put that in
3 my notes, per se. I mean, I do have patients
4 that I treat for obsessive compulsive
5 disorders, but --

6 Q. Would you rather --

7 A. Again, and usually I would say
8 that. I think if that was my own, you know,
9 emotion dealing with the patient, but all I
10 can say is that I don't use that word in my 09:50AM
11 notes with him, so --

12 Q. Would you rather say that it has
13 been his focus, or one of his focuses since
14 the time of the independent medical
15 examinations through date?

16 MR. WELLINGTON: Objection.
17 Asked and answered.

18 A. I mean, I would definitely agree
19 that I think it's been one of his focuses.

20 Q. Something he's intense about? 09:51AM

21 A. That's one that I think he has
22 shown some intensity, you know, as we do our
23 visits, correct.

24 Q. That was your last visit with

1 him, April 20th, 2007?

2 A. Correct.

3 Q. You do have a note that he
4 passed along to you, a phone call note that
5 he passed along to you suggesting that he had
6 had a heart attack earlier this month and
7 wouldn't be attending this deposition?

8 A. Yeah, there was one note in
9 regards to the -- looks like his wife called
10 me, 6/1/07. That one doesn't state anything 09:51AM
11 about the deposition.

12 Q. Look on the front of your pad.

13 A. Yeah, this particular one which
14 was June 12th, correct.

15 Q. Did he say why he would not be
16 attending the deposition or why he would not
17 be able to attend the deposition?

18 A. Just according to the note, I
19 just associate it with the physical problem,
20 the heart attack, correct. 09:52AM

21 Q. A heart attack, do you have any
22 records or any knowledge of it?

23 A. Outside of that other phone call
24 from his wife, no.

1 Q. Do you know if it was related to
2 his high cholesterol issues?

3 A. Again, I don't have any other,
4 outside of that his wife told me that he had
5 some stints, so, you know, I could make that
6 connection.

7 Q. What is a stint exactly?

8 A. A stint generally is inserted by
9 the cardiologist to keep a blockage of his
10 arteries open.

09:52AM

11 Q. And blockages are generally
12 cholesterol issues?

13 A. It would be one of the
14 contributing factors, correct.

15 Q. Was there any evaluation of the
16 potential affects of the diclofenac --
17 diclofenac on his coronary situation?

18 A. Again, prior to this, there was
19 none.

20 Q. In looking at the information on
21 diclofenac, what's considered as the most
22 important information is that the medicine
23 can increase your risk of life threatening
24 heart or circulatory problems, including

09:53AM

1 heart attack or stroke, you were aware of
2 that list?

3 A. Which is listed with all
4 non-steroidals, correct.

5 Q. This risk will increase the
6 longer you use diclofenac, that's a standard
7 risk of using a non-steroidal
8 anti-inflammatory, isn't it?

9 A. Correct.

10 Q. Do you have a scheduled next 09:54AM
11 visit with Mr. Kearney?

12 A. I don't think at the visit in
13 April we set up a specific time. At that
14 point there was some focus around the
15 orthopedic things and I just listed in terms
16 of the chronic depression, no change in plan,
17 so re-check labs, that was April 20th visit,
18 correct.

19 Q. Okay. And no scheduled next
20 visit, probably next April? 09:54AM

21 A. We've generally been following,
22 looks like, on a yearly basis.

23 Q. Do you know whether Mr. Kearney
24 has had any limiting or ill affects from his

1 cardiac episode earlier this month?

2 A. I have no other history outside
3 of those two phone calls.

4 Q. You haven't seen him since that
5 time?

6 A. No.

7 Q. You can't confirm one way or the
8 other whether he's actually had a heart
9 attack or whether he just had some pain and
10 when they did the examination they put stints 09:55AM
11 in?

12 A. Like I say, that's all verbal
13 history from he and his wife.

14 Q. You will be expecting to get
15 records from them as his primary physician,
16 right?

17 A. Generally I would expect that at
18 some point, correct.

19 MR. ELLIS: Doctor, thank you,
20 that's all the questions I have. Appreciate 09:55AM
21 your time.

22 MR. WELLINGTON: No questions.

23

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MARTIN P. LEHENBAUER, M.D.

* * *

(DEPOSITION CONCLUDED AT 9:55 A.M.)

* * *

C E R T I F I C A T E

STATE OF OHIO

: SS

COUNTY OF HAMILTON

I, Elaine Haberer, the undersigned, a duly qualified notary public within and for the State of Ohio, do hereby certify that MARTIN P. LEHENBAUER, M.D. was by me first duly sworn to depose the truth and nothing but the truth; foregoing is the deposition given at said time and place by said witness; deposition was taken pursuant to stipulations hereinbefore set forth; deposition was taken by me in stenotype and transcribed by me by means of computer; deposition was made available to the witness for examination and signature; I am neither a relative of any of the parties or any of their counsel; I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Civil Rule 28(D) and have no financial interest in the result of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office at Cincinnati, Ohio this 25th day of June, 2007.

My commission expires
July 30, 2008

Elaine Haberer, RPR
Notary Public -
State of Ohio